

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

First-Class Mail Package Service (FCPS)
Service Standard Changes, 2021

Docket No. N2021-2

STATEMENT OF POSITION

The Commonwealth of Pennsylvania, the States of New York, California, Connecticut, Delaware, Hawai‘i, Maine, Maryland, Michigan, Minnesota, New Jersey, North Carolina, Oregon, and Washington, the Commonwealths of Massachusetts and Virginia, the District of Columbia, and the City of New York (the “States and Cities”) respectfully submit this Statement of Position on the United States Postal Service’s Request for an Advisory Opinion on Changes in the Nature of Postal Services (June 17, 2021) (“the Request”).

Over one year ago, the Postal Service implemented a series of purported cost-saving initiatives that had a devastating effect on mail service. Those initiatives, which included drastic changes to the Postal Service’s policies with respect to extra and late trips, were implemented virtually overnight, in the middle of a pandemic, and without any prior input from the Commission. Mail delivery across the nation slowed, and Americans who depended on the Postal Service for the delivery of prescription medication, paychecks, and other necessities were left stranded. The increased delays also made it more difficult for states and municipalities to perform a variety of essential functions and provide critical services to their residents.

As a result, four different federal judges found that the Postal Service had acted unlawfully and entered injunctions preventing it from further implementing these changes.¹ In a subsequent review of the Postal Service’s actions, the Postal Service Inspector General found that the changes were communicated in a way that “resulted in confusion and inconsistent application of operational changes across the country” and were “[i]mplemented without completing a study or analysis of the impact of the changes on mail service.”² The IG concluded:

¹ See *Pennsylvania v. DeJoy*, 490 F. Supp. 3d 833, 844 (E.D. Pa. 2020); *New York v. Trump*, 490 F. Supp. 3d 225, 231 (D.D.C. 2020); *Vote Forward v. DeJoy*, 490 F. Supp. 3d 110 (D.D.C. 2020); *NAACP v. United States Postal Serv.*, 496 F. Supp. 3d 1 (D.D.C. 2020); *Washington v. Trump*, 487 F. Supp. 3d 976, 984 (E.D. Wash. 2020); *Jones v. United States Postal Serv.*, 488 F. Supp. 3d 103, 112 (S.D.N.Y. 2020).

² USPS Office of Inspector Gen., Report No. 21-014-R21, *Deployment of Operational Changes*, at 7-8 (Nov. 6, 2020), <https://www.uspsoig.gov/sites/default/files/document-library-files/2020/21-014-R21.pdf>; see also USPS Office of Inspector Gen., Report No. 20-292-R21, *Operational Changes to Mail Delivery*, (Oct. 19, 2020), <https://www.uspsoig.gov/sites/default/files/document-library-files/2020/20-292-R21.pdf>.

“The Postal Service’s mail service performance significantly dropped beginning in July 2020, directly corresponding to implementation of the operational changes and initiatives.”

Regrettably, it appears that the Postal Service is repeating many of these mistakes. As part of its Strategic Plan,³ the Postal Service is moving swiftly and without proper diligence to change postal operations and degrade service standards—first for First-Class Mail and now for First-Class Package Services (“FCPS”).

In its Request, the Postal Service proposes to make nearly one third of contiguous⁴ First-Class Packages subject to a delivery standard of 4 or 5 days, compared to the current standard of 2 to 3 days.⁵ The Postal Service’s FCPS consists of lightweight packages—less than 13 ounces for retail customers and less than one pound for commercial shippers.⁶ FCPS is often used to ship mail-order prescriptions and orders from online marketplaces, the latter of which are “a key conduit for small and medium-sized businesses.”⁷ In Fiscal Year 2020, the American public shipped approximately 1.85 billion FCPS packages, which represents 25 percent of all packages shipped via USPS that year.⁸ As the Postal Service itself acknowledges, FCPS “currently offers the best value proposition of fast delivery times and low prices.”⁹

Just last month, the Commission issued a thorough and thoughtful advisory opinion on the proposed changes to First-Class Mail service standards, which will slow 39 percent of First-Class Mail.¹⁰ The Commission found that the Postal Service’s proposal rested on unreasonable

³ USPS, *Delivering for America*, at 5, https://about.usps.com/what/strategic-plans/delivering-for-america/assets/USPS_Delivering-For-America.pdf [“USPS Strategic Plan”].

⁴ “Contiguous” packages refers to packages sent and received within the contiguous 48 states.

⁵ Replacement Direct Testimony of Stephen B. Hagenstein on Behalf of the USPS (USPS-T-1) (Filing ID: 118978), at 34-35 (June 21, 2021) [“Hagenstein Testimony”]; Notice of the United States Postal Service of Revisions to Certain Pages of the Request for an Advisory Opinion, USPS-T-1, USPS-T-2, AND USPS-T-3 – Errata (Filing ID: 119153), at 3 (July 2, 2021) [“USPS Errata”].

⁶ Direct Testimony of Thomas J. Foti on Behalf of the United States Postal Service (Filing ID: 118922), at 3 (June 17, 2021) [“Foti Testimony”].

⁷ *Id.* at 6.

⁸ Postal Regulatory Comm’n, *Financial Analysis of United States Postal Service Financial Results and 10-K Statement*, at 67 (Apr. 26, 2021), <https://www.prc.gov/docs/116/116704/FY2020%20Financial%20Report.pdf> [“PRC Financial Analysis FY 2020”]; USPS, *Fiscal Year 2020 Annual Report to Congress*, at 25 (May 14, 2021), <https://about.usps.com/what/financials/annual-reports/fy2020.pdf>.

⁹ Foti Testimony at 2.

¹⁰ Postal Regulatory Comm’n, Docket No. N2021-1, *Advisory Opinion on Service Changes Associated with First-Class Mail And Periodicals* (July 20, 2021), <https://www.prc.gov/>

and untenable assumptions, an incomplete and faulty analysis, and poor modeling. The Commission concluded that the “Postal Service has not confidently demonstrated that its plans” will achieve its goals of improving service performance and its financial condition.¹¹ Chairman Kubayanda wrote separately to question “whether the Postal Service has conducted a serious cost-benefit analysis with respect to the plan for remittance mail,” which is relied on disproportionately by elderly Americans and which will be significantly impacted by the proposed changes.¹² Vice Chairwoman Poling also wrote separately about how the proposed changes ignores the needs of rural America and vulnerable groups.¹³

Instead of heeding Commissioners “chosen solely on the basis of their technical qualifications, professional standing, and demonstrated expertise in economics, accounting, law, or public administration,” 39 U.S.C. § 502(a), the Postal Service largely ignored the advisory opinion’s assessment and is planning to implement the service standard changes as proposed.¹⁴

The Request to slow FCPS suffers from the same flaws. The Postal Service relies on many of the same assumptions, analysis, and modeling that the Commission already found lacking. The Request also disregards the public interest in speedy mail delivery and dismisses the harms to vulnerable communities and those who rely on the Postal Service to get medicine. The Postal Service plans to implement these changes despite never having restored service to its prior levels following the disastrous July 2020 initiatives and while the country still suffers from the COVID-19 pandemic and accompanying economic downturn.

There is a different approach. The Commission should urge the Postal Service to abandon these misguided efforts and instead focus its attention on improving service performance. It must examine the events of the past year to identify what went wrong with the implementation of its 2020 initiatives to ensure that similar failures do not recur. Only once the Postal Service has shown that it can reliably meet its performance targets should it consider whether it is necessary to change its service standards to address long-term trends in the utilization of its products. To ensure that the Postal Service pursues this responsible course of action, the Commission should recommend that the Postal Service not implement the Request.

I. The Postal Service’s Mission and Legal Obligations

Since its creation, the Postal Service has functioned as a public agency with a public service mission. That mission requires it to “provide prompt, reliable, and efficient services to

docs/119/119311/Docket%20No.%20N2021-1_Advisory%20Opinion.pdf, [“Advisory Opinion First-Class Mail”].

¹¹ *Id.* at 65.

¹² Advisory Opinion First-Class Mail, Separate Views of Chairman Kubayanda, at 2-7.

¹³ Advisory Opinion First-Class Mail, Separate Views of Vice Chairwoman Poling, at 4-9.

¹⁴ *Revised Service Standards for Market-Dominant Mail Products*, 86 Fed. Reg. 43,941 (Aug. 11, 2021) [“First-Class Mail Final Rule”].

patrons in all areas” and to “render postal services to all communities.” 39 U.S.C. § 101(a). The Postal Service is specifically required to prioritize serving communities that would otherwise be underserved, by “provid[ing] a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining,” *Id.* § 101(b). Consistent with these obligations, the Postal Service must “serve as nearly as practicable the entire population of the United States,” *id.* § 403(a), and must not “make any undue or unreasonable discrimination among users of the mails,” *id.* § 403(c). In carrying out its responsibilities, the Postal Service must “give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail.” *Id.* § 101(e).

In 2006, Congress required the Postal Service to set service standards for market-dominant products “in consultation with” the Commission. 39 U.S.C. § 3691(a). Such service standards must be “designed to achieve” the following four objectives:

- (A) To enhance the value of postal services to both senders and recipients.
- (B) To preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self-sustaining.
- (C) To reasonably assure Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices.
- (D) To provide a system of objective external performance measurements for each market-dominant product as a basis for measurement of Postal Service performance.

39 U.S.C. § 3691(b)(1).

In setting service standards consistent with these objectives, the Postal Service is required to “take into account” eight specified factors. Among these are “the actual level of service that Postal Service customers receive under any service guidelines previously established,” “the degree of customer satisfaction with Postal Service performance in the acceptance, processing and delivery of mail,” and “the needs of Postal Service customers, including those with physical impairments,” as well as “the policies of this title [39],” which include the statutory obligations set forth above. 39 U.S.C. § 3691(c).

The Postal Service established service standards for all market-dominant products—including “Package Services”—in 2007.¹⁵ Until 2021, the Postal Service had modified its service standards only once, as part of a broader network rationalization initiative to consolidate processing and transportation networks.¹⁶ The modifications extended the applicable service standards for certain categories of First-Class Mail, as well as First-Class Packages sent to or

¹⁵ *Modern Service Standards for Market-Dominant Products*, 72 Fed. Reg. 72,216 (Dec. 19, 2007), codified at 39 C.F.R. pt. 121.

¹⁶ Postal Regulatory Comm’n, Docket No. N2012-1, *Advisory Opinion on Mail Processing Network Rationalization Service Changes* (Sept. 29, 2012), https://www.prc.gov/docs/85/85269/Advisory_Opinion_%20PDF%20_09282012.pdf

from outside the contiguous United States, but did not change the service standards for Package Services mailed in the contiguous United States.¹⁷ The Commission later concluded, however, that the “Postal Service did not realize significant increases in service performance for all mail volumes after it implemented its network rationalization initiative in 2012.”¹⁸

Since 2012, many of the products that fell within “Package Services” have been transferred from the market-dominant category to the competitive category of products, including what now constitutes “First-Class Package Services.” But several market-dominant package services remain: Alaska Bypass Service; Bound Printed Matter (BPM) Flats; BPM Parcels; and Media Mail/Library Mail.¹⁹ It is not clear whether the Postal Service intends to change the service standards for these products as well.

II. The Request Would Significantly Slow First-Class Package Services

Under the Postal Service’s current service standards, all First-Class Packages sent within the 48 contiguous states are under a 2- to 3-day delivery standard.²⁰ As has historically been true of First-Class Mail, *see* 39 C.F.R. § 121.1, FCPS packages are subject to a 2-day delivery standard if they can be delivered in a combined drive time of 6 hours or less and subject to a 3-day delivery standard if drive time is greater than 6 hours and the origin and destination are within the contiguous 48 states.²¹ Practically, this means FCPS packages are delivered via surface transportation within 3 days if the transit window is between 6 and 38 hours and via air transportation if surface transit would require over 38 hours.²²

For the first time since adopting these service standards, the Postal Service seeks to extend its service standards for FCPS in the contiguous United States. The Postal Service proposes to shift nearly one third of all FCPS packages to slower delivery standards, with nearly half of FCPS packages currently subject to a 3-day standard shifting to a 4- or 5-day standard.²³ Under the Request, a 2-day standard would now apply to First-Class Packages with a combined drive time of 8 hours or less; a 3-day standard would apply to packages with a combined drive time of between 8 and 32 hours; a 4-day standard would apply to packages with a combined drive time of between 32 and 50 hours; and a 5-day standard would apply to packages with a combined drive time of more than 50 hours.²⁴

¹⁷ *Revised Service Standards for Market-Dominant Mail Products*, 77 Fed. Reg. 31,190, 31,195 (May 25, 2012).

¹⁸ Advisory Opinion First-Class Mail at 86.

¹⁹ PRC Financial Analysis FY 2020 at 62.

²⁰ 39 C.F.R. § 121.4; Hagenstein Testimony at 6-8.

²¹ *See supra* note 20.

²² Hagenstein Testimony at 16.

²³ *Id.* at 34-35; USPS Errata at 3.

²⁴ Hagenstein Testimony at 8-9.

An analysis by Partners for Economic Solutions (“PES”) shows that certain areas will face far more significant downgrades in FCPS delivery than others. PES found that downgrades would be

most extensive in southern Texas and southern Oregon with delivery standards expected to affect 81 to 99 percent of three-digit ZIP code areas in those geographic areas. All of the West Coast and most of Nevada and Idaho as well as northwest Montana and northwest and southeast Arizona will see First-Class package service standards downgraded for 61 to 80 percent of three-digit ZIP code areas in those places. A downgrade in service standards for 41 to 60 percent of ZIP codes will occur in the balance of Montana, Idaho, Nevada and Arizona as well as Utah, western Wyoming, southern New Mexico, southwestern Texas, western North Dakota and northwestern South Dakota.²⁵

At the same time, “[m]ost of the East Coast and New England, Colorado, northwestern Minnesota, western and central Louisiana, southwestern Arkansas, and the balance of Wyoming, Arizona, New Mexico and Texas will see package delivery downgrades from 41 to 60 percent of origin ZIP codes.”²⁶

III. The Request Cannot Be Justified Based on the Postal Service’s Rationale

The effect of the Postal Service’s proposed changes would be significant: nearly one-third of all FCPS packages—and nearly 16 percent of all pharmaceuticals—would be subject to either a 4- or 5-day standard, longer than that applicable to *any* contiguous FCPS packages today. But the same shortcomings that pervaded the First-Class Mail proposal also plague the FCPS proposal, which rests on many of the same models, assumptions, and analyses that the Commission has already found lacking.²⁷ The Postal Service has failed to show that its Request is justified.

First, the Postal Service claims that the revised FCPS standards are designed to “integrat[e] FCPS into a more efficient coast-to-coast First-Class Mail (‘FCM’) surface network and reduc[e] the use of air transport.”²⁸ But the Commission has already observed that “substituting surface transportation for air transportation[] does not mitigate processing point

²⁵ Rebuttal Testimony of Anita Morrison on Behalf of American Postal Workers Union (APWU RT-1) (Filing ID: 119434), at 3 (Aug. 4, 2021) [“Morrison Rebuttal Testimony”].

²⁶ *Id.*

²⁷ *E.g.*, Request at 7-8; Hagenstein Testimony at 4, 19, 31, 37; Direct Testimony of Michelle Kim on Behalf of the United States Postal Service (Filing ID: 118928), at 2, 3, 5, 9 (June 17, 2021) [“Kim Testimony”];

²⁸ Foti Testimony at 2.

failures,” which means the Postal Service’s plan will not “address the trend of lower on-time service performance” caused by those failures.²⁹

In addition, although the Postal Service’s modeling and financial analysis presents First-Class Mail and FCPS as moving together in that surface network,³⁰ the Postal Service’s proposed business rules for FCPS in the contiguous United States diverge substantially from the business rules it recently finalized for First-Class Mail in the same geographic area.³¹

Service Standard	First-Class Mail (adopted business rules)	FCPS (proposed business rules)
2 Days	Combined drive time of 3 hours or less.	Combined drive time of 8 hours or less.
3 Days	Combined drive time of between 3 and 20 hours.	Combined drive time of between 8 and 32 hours.
4 Days	Combined drive time of between 20 and 41 hours.	Combined drive time of between 32 and 50 hours.
5 Days	Combined drive time of more than 41 hours.	Combined drive time of more than 50 hours.

Given that First-Class Mail and FCPS would be moving in the same surface transportation network subject to the same constraints on local and highway transportation speeds, it is not clear why—or how—the Postal Service is proposing to move FCPS packages between 1.2 and 2.7 times farther than First-Class Mail in the same period of time. What is clear is that a request prioritizing packages above First-Class Mail cannot be squared with the statutory requirement that the Postal Service “give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail.” 39 U.S.C. § 101(e).³²

²⁹ Advisory Opinion First-Class Mail at 66; *see also id.* at 74-100; *see also* Response of United States Postal Service Witness Hagenstein to Intervenor American Postal Workers Union, AFL/CIO’s Interrogatories 1-3, 5-13 and 16 (Filing ID: 119385), at APWU/USPS-T-1/7 (July 27, 2021) (“Not all delays and impact to FCPS performance are due to the air network. Other delays include: delays due to package processing capacity constraints, missorted and mis-sent volumes, first and last-mile delays, processing errors, and surface transit delays.”).

³⁰ *E.g.*, Kim Testimony at 3 (“The Postal Service projects a reduction of 61.2 percent of First-Class Mail (FCM) pounds flown and a corresponding percentage reduction in FCPS pounds flown.”); Hagenstein Testimony at 37 (“In particular, the more efficient surface routings created by the model are based on an ability to move both FCPS and the mail volume discussed in Docket No. N2021-2 through the surface transportation network.”).

³¹ *Compare* Hagenstein Testimony at 8-9, *with* First-Class Mail Final Rule, 86 Fed. Reg. at 43,952.

³² The Postal Service cannot dispute that First-Class Mail constitutes important letter mail; it recognized that First-Class Mail falls within § 101(e) more than four decades ago. *See General Oversight and Postal Service Budget Hearing Before the Subcomm. on Postal*

Second, the Postal Service’s model for estimating the impact on FCPS volumes is specifically “based on an expanded transportation window for both FCPS and First-Class Mail, and hence on implementing the service standards being proposed in this docket with the service standards for First-Class Mail and end-to-end Periodicals being considered in Docket No. 2021-1.” Request at 7. As such, “the assumptions, inputs, and constraints utilized in the First-Class Mail service standard modeling were also used in the modeling of the FCPS service standard change model.”³³ But the Commission has already found that the First-Class Mail model “is not grounded in reality.”³⁴ Instead, it relies on a “modeled base case of the current transportation network [that] is notably more efficient than the current network.”³⁵ For this and other reasons, the Commission concluded that the Postal Service had not provided “operational plans or proof of concept to show that the modeled outcomes of increased capacity utilization are feasible.”³⁶ Accordingly, the Postal Service’s model likely overestimates the extent to which the proposed changes will improve transit efficiency for FCPS packages as well.

Third, the Postal Service argues that the proposed changes to service standards for FCPS are necessary because “attempting to meet the current standards results in high costs.” Request at 6. But the proposed changes will result in a paltry \$42 million in annual savings.³⁷ This is more than *four times less* than the \$169 million that the Postal Service has projected to save annually due to slowing First-Class Mail—an amount the Commission already recognized as “not indicat[ing] much improvement, if any, to the Postal Service’s current financial condition.”³⁸ As the Commission has already noted, the Postal Service’s operating expenses for Fiscal Year 2020 are \$82 billion.³⁹ Slowing one third of FCPS packages will save the Postal Service only 0.05 percent of its operating budget.

Operations and Services of the H. Comm. on Post Office and Civil Service 95th Cong. 67 (Mar. 15, 1977).

³³ Hagenstein Testimony at 31; *see also* Responses of the United States Postal Service to Questions 1-15 of Presiding Officer’s Information Request No. 2 (Filing ID: 119219), at Response 11 (July 8, 2021) [“Presiding Officer’s Information Request No. 2”] (Q: “Please confirm that the process used to develop the proposed service standard for FCPS is identical to the process used to determine the proposed service standard for Market Dominant First-Class Mail. If not confirmed, please explain the differences in processes.” A: “Confirmed.”).

³⁴ Advisory Opinion First-Class Mail at 67.

³⁵ *Id.*; *see also* Presiding Officer’s Information Request No. 2 at Response 10 (“The proposed service standards were based on improving capability to transport more volumes on surface coast-to-coast.”).

³⁶ Advisory Opinion First-Class Mail at 68; *see also id.* at 115-146.

³⁷ Kim Testimony at 9; USPS Errata at 21.

³⁸ Advisory Opinion First-Class Mail at 113.

³⁹ *Id.* at 109.

Moreover, the Postal Service admits that its cost-savings analysis is “the result of a combined model of both FCM and FCPS service standard changes being implemented together.”⁴⁰ Indeed, the Postal Service argues that its financial analysis for FCPS “cannot be viewed in isolation from” the financial analysis for First-Class Mail.⁴¹ But the Commission has already concluded that “the estimated cost savings” for First-Class Mail may be inflated” because “the data are not complete,” “several underlying assumptions appear untenable,” and “estimated cost savings are based on an outlier year (FY 2020) when costs and modes were in flux compared to prior years.”⁴² And even if all cost savings were realized, “the proposal does not substantially affect the Postal Service’s financial condition.”⁴³

Instead of slowing FCPS and First-Class Mail, the Postal Service should seek to take advantage of a statutory provision authorizing Congress to “reimburse[]” the Postal Service “for public service costs incurred by it in providing a maximum degree of effective and regular postal service nationwide, in communities where post offices may not be deemed self-sustaining, as elsewhere.” 39 U.S.C. § 2401(b)(1). Since 1984, the reimbursement amount has been “equal to 5 percent” of the “sum appropriated to the former Post Office Department by Act of Congress for its use in fiscal year 1971.” 39 U.S.C. § 2401(b)(1)(G), (A). This amount equals \$460 million annually,⁴⁴ but the Postal Service has not asked for these funds since 1982. The States and Cities urge the Commission to recommend that the Postal Service and Board of Governors ask Congress to appropriate these funds, which constitute more than ten times the annual savings the Postal Service expects to derive from the Request and more than twice the annual savings of slowing First-Class Mail and FCPS combined.

Finally, the events of the past year caution strongly against imposing sweeping changes of the type the Postal Service proposes—especially without proper modeling and analysis. The Postal Service has faced enormous challenges as a result of the pandemic, and postal employees have performed their jobs admirably under incredible strain. As has been well documented, package volume increased significantly as Americans remained at home. Postal employees, who had no choice but to continue to perform their duties throughout the pandemic, were disproportionately at risk for COVID-19, making it even more challenging for the Postal Service to provide consistent, reliable service. But the anomalous nature of the past year should give the Postal Service pause before seeking to impose sweeping changes of the type envisioned in the Request and in the Strategic Plan. The trends seen in 2020 and 2021 may continue into the future, or they may not, but no one would suggest using the results from this time period as a baseline for long-term planning.

⁴⁰ Kim Testimony at 9.

⁴¹ *Id.*

⁴² Advisory Opinion First-Class Mail at 66.

⁴³ *Id.* at 67; *see also id.* at 103-113.

⁴⁴ *See* Postal Regulatory Comm’n, *Report on Universal Postal Service and the Postal Monopoly*, at 69 n.39 (Dec. 19, 2008), <https://www.prc.gov/docs/61/61628/uso%20report.pdf>.

The Postal Service has already once imposed sweeping changes in the face of these unprecedented challenges, and the result was disastrous. As the Inspector General found, the July 2020 cost-saving initiatives were implemented without adequate planning and were poorly communicated, leading to a rapid decline in service from which the Postal Service has not fully recovered. Postal Service leadership has yet to acknowledge that the cost-saving initiatives were responsible for the decline in service seen in the last half of 2020, much less gone through the arduous process of understanding exactly what occurred, correcting the errors, and figuring out how to prevent similar disasters in the future. Without such understanding, the Postal Service risks repeating similar mistakes—and its apparent desire to rush headlong into a reorientation of its business model while the nation still recovers from the pandemic suggests it has learned little from its experience.

The Postal Service should abandon its current effort and refocus its energies on fixing its ongoing performance deficiencies. Instead of doing so, the Postal Service appears to have made up its mind already, and is treating the involvement of this Commission as a formality. The Commission should insist that the Postal Service live up to its statutory obligations and encourage it to abandon this ill-advised effort.

IV. The Request Would Harm the States, Cities, and Their Residents

The prompt and reliable delivery of First-Class Packages is essential to the States, Cities, and their residents. The proposed service standards would slow down FCPS package delivery for a significant portion of First-Class Packages, harming the significant interests of the States, Cities, and their residents in both reliability *and* speed. The Postal Service’s plan sacrifices speed for a purported improvement in reliability to the detriment of millions, especially those who rely on the Postal Service to access life-saving prescriptions. And contrary to the Postal Service’s mandate to “provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining,” 39 U.S.C. § 101(b), the Request would disproportionately impact our residents in these areas.

A. Impact on Prescriptions and Public Health

The Postal Service uses its faulty model to estimate the proposed standards’ impact on shipments from pharmaceutical companies—one of its “largest FCPS customer segments,” who typically ship prescription medications using FCPS.⁴⁵ The Postal Service states that service standards will be downgraded for 16 percent of pharmaceutical FCPS volume,⁴⁶ significantly harming the States’ residents who rely on mail-order medications. Indeed, many must turn to mail-order medications in order to get highly specialized prescriptions for chronic conditions that are not as easily found at local pharmacies. Increased transit time may be especially dangerous for residents whose medications require refrigeration or are otherwise sensitive to temperature changes. For some, insurance companies require prescriptions to be fulfilled by USPS in order to be covered and, as such, many low-income patients cannot seek out faster alternatives.

⁴⁵ Foti Testimony at 6.

⁴⁶ Hagenstein Testimony at 38; USPS Errata at 14.

The Postal Service fails to account for the risks that geographic disparities for pharmaceutical deliveries pose as well. According to Partners for Economic Solutions, several of the undersigned States and Cities would suffer service standard downgrades that affect more than 16 percent of pharmaceuticals. “[D]owngrades in the service standards of any length will be most prevalent in California, southwest Arizona, northwest Nevada, Oregon, western Washington, northwest Montana, north central North Dakota, northern Illinois, southeastern Wisconsin and Maryland’s Eastern Shore, affecting more than 51 percent of [pharmaceutical] packages delivered.”⁴⁷ Over 21 percent of pharmaceutical package volume in Maryland’s Eastern Shore will arrive two days slower.⁴⁸

These geographic disparities violate the Postal Service’s legal obligation to not “make any undue or unreasonable discrimination among users of the mails.” 39 U.S.C. § 403(c). Patients relying on the Postal Service for prescriptions are users of the mail and are located throughout the country. A patient living in California or Maryland’s Eastern Shore is no differently situated than a patient living in Wyoming or Kansas, but patients living in the former areas will have to wait a day or longer than those living in the latter areas to get the same prescriptions. Patients should not be subject to worse service standards solely by virtue of their geography.

Slowing the delivery of prescriptions also presents serious public health concerns to the States and Cities, especially as the COVID-19 pandemic continues to affect communities everywhere. Tens of millions of residents have long relied on mail-order medications to treat their conditions, but the pandemic has required many more—including more elderly and immunocompromised residents—to turn to mail-order medications as well. Slowing these deliveries when hospitals and other healthcare providers are already overwhelmed or understaffed due to the COVID-19 surge risks exacerbating the current crisis, especially when “the Postal Service does not expect to meet or exceed the 95 percent target level for FY 2022” for FCPS packages.⁴⁹

Finally, actively taking steps to slow the delivery of pharmaceuticals violates the CARES Act, which requires that “during the COVID-19 emergency, the Postal Service—(1) shall prioritize delivery of postal products for medical purposes.” Pub. L. No. 116-136 § 6001(c) (March 27, 2020). The Postal Service barely acknowledges the continued existence of the COVID-19 pandemic in its Request, much less attempts to explain how a proposal to slow 16 percent of pharmaceuticals would not constitute a failure to “prioritize delivery of postal products for medical purposes.”⁵⁰ The Postal Service’s myopic insistence on swiftly

⁴⁷ Morrison Rebuttal Testimony, at 6.

⁴⁸ *Id.* at 7.

⁴⁹ Responses of the United States Postal Service to Questions 1-22 of Presiding Officer’s Information Request No. 4 (Filing ID: 119356), at Response 9 (July 23, 2021).

⁵⁰ *E.g.*, Responses of the United States Postal Service to Questions 1-9 of Presiding Officer’s Information Request No. 12 (Filing ID: 119568), at Response 5.a. (Aug. 17, 2021) (Q: “Is it fair to say that pharmaceutical shippers, or any FCPS shipper, who wish to receive the

implementing significant changes to its operations in the midst of a national health crisis—and in particular, a crisis that has caused an increased reliance on Postal Service products—is reason enough for the Commission to recommend against adopting the Request.

B. Impact on Vulnerable Communities

The States and Cities are also concerned about the Postal Service’s failure to account for the effects of the proposed changes on specific populations—including veterans and rural communities. For the latter, the Postal Service is statutorily obligated to “provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining,” as it was “the specific intent of Congress that effective postal services be insured to residents of both urban and rural communities.” 39 U.S.C. § 101(b).

With respect to veterans, the Request’s impact cannot be overstated. The Department of Veterans Affairs fulfills 80 percent of prescriptions by mail, or over 300,000 deliveries to veterans every single day. Some 90 percent of those prescriptions are shipped through the Postal Service. The proposed service standard changes will require millions of veterans to adjust or pay nearly twice as much (or more) for faster alternatives—if that option is even available to them.⁵¹ With no plans to achieve its 95 percent on-time target for Fiscal Year 2022, the Request risks serious health harms to injured and disabled veterans from across the States and Cities.

With respect to rural communities, PES has found that many large and heavily rural states—especially in the West and along the border—will be disproportionately impacted by the service standard changes.⁵² As mentioned above, 81 to 99 percent of zip codes in southern Oregon and southern Texas will be affected.⁵³ All of the West Coast will see downgrades for 61 to 80 percent of zip codes.⁵⁴ Much of these areas would experience downgrades of not one, but two days—from a 3-day standard to a 5-day standard.⁵⁵ As Vice Chairwoman Poling has already thoroughly explained, rural communities often lack suitable local alternatives to the Postal

same service as they currently receive (but the current O-D pair is being downgraded) will be forced to ‘buy up’ to Priority Mail under the proposed changes?” A: “Any FCPS shipper sending material between an O-D pair for which the service standard would be lengthened under the change contemplated in this proceeding would, after potential implementation of this change, have at least two options if they wished to continue to receive the same level of service currently afforded FCPS pieces between that O-D pair. One, they could seek shipping alternatives outside the Postal Service, or, two, as suggested in the question, they could upgrade to Priority Mail.”).

⁵¹ *E.g., id.*

⁵² Morrison Rebuttal Testimony, at 3.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 3-4.

Service,⁵⁶ and her discussion applies equally to FCPS. The Postal Service's Request would harm the very communities most dependent on its services, which is inconsistent with its universal service mandate. The proposed changes should not be implemented.

V. The Commission Should Recommend that the Postal Service Issue a Notice of Proposed Rulemaking and Accept Public Comment.

In recognition of its public service mandate, the Postal Service has—until now—solicited and responded to public comment when setting or amending service standards for FCPS. In 2007, the Postal Service issued a notice of proposed rulemaking and subsequently published a final rule that responded to public comment and explained the new service standards.⁵⁷ The Postal Service noted that the comments had “resulted in amendments, clarifications or corrections to the proposed regulations.”⁵⁸ In 2012, the Postal Service issued both an advanced notice of proposed rulemaking and a notice of proposed rulemaking prior to publishing the revised service standards,⁵⁹ and it kept the public apprised as it modified the timelines.⁶⁰ The Postal Service again observed that comments had helped guide the development and implementation of the changes.⁶¹ And just earlier this year, the Postal Service issued a notice of proposed rulemaking for its proposed changes to service standards for First-Class Mail and Periodicals and published a final rule that responded to comments.⁶²

The Postal Service has not issued a notice of proposed rulemaking for its new proposed changes to FCPS service standards. This has deprived the public both of an opportunity to comment directly to the Postal Service and of an explanation should the Postal Service proceed

⁵⁶ Advisory Opinion First-Class Mail, Separate Views of Vice Chairwoman Poling, at 4-6.

⁵⁷ *Modern Service Standards for Market-Dominant Products*, 72 Fed. Reg. 58,946 (Oct. 17, 2007) (notice of proposed rulemaking); *Modern Service Standards for Market-Dominant Products*, 72 Fed. Reg. 72,216 (Dec. 19, 2007) (final rule).

⁵⁸ 72 Fed. Reg. at 72,219.

⁵⁹ *Proposal to Revise Service Standards for First-Class Mail, Periodicals, and Standard Mail*, 76 Fed. Reg. 58,433 (Sept. 21, 2011) (advanced notice of proposed rulemaking); *Service Standards for Market-Dominant Mail Products*, 76 Fed. Reg. 77,942 (Dec. 15, 2011) (notice of proposed rulemaking); *Revised Service Standards for Market-Dominant Mail Products*, 77 Fed. Reg. 31,190 (May 25, 2012) (final rule).

⁶⁰ *Revised Service Standards for Market-Dominant Mail Products; Postponement of Implementation Date*, 79 Fed. Reg. 4079 (Jan. 24, 2014) (final rule postponing implementation date of phase two); *Revised Service Standards for Market-Dominant Mail Products; Designation of Implementation Date*, 79 Fed. Reg. 44,700 (Aug. 1, 2014) (designating implementation date of phase two).

⁶¹ 77 Fed. Reg. at 31,191.

⁶² *Service Standards for Market-Dominant Mail Products*, 86 Fed. Reg. 21,675 (Apr. 23, 2021) (notice of proposed rulemaking); *First-Class Mail Final Rule*, 86 Fed. Reg. 43,941.

with adopting the changes. This proceeding is not an adequate substitute, as the Postal Service's decision to file critical information about the nature and anticipated impact of the Request under seal has undermined the ability of the public to evaluate the proposed changes—much less meaningfully participate in the proceedings.

The absence of an opportunity to comment on changes to FCPS service standards is especially troubling in light of the Postal Service's disingenuous treatment of comments on the First-Class Mail service standard changes. In the First-Class Mail final rule, the Postal Service repeatedly dismissed as irrelevant comments that spoke to the importance of products primarily shipped via USPS package services, because the "changes under review in this rulemaking will affect only First-Class Mail and Periodicals—not the packages which bear items like food, prescription medications, and other merchandise."⁶³ The Postal Service did not acknowledge that it had already submitted the Request or that it did intend to make changes that will affect packages that bear "prescription medications[] and other merchandise." Nor did it acknowledge that its plans for an expanded First-Class Mail surface transportation network and the cost-benefit analysis of those plans hinged on "both FCM and FCPS service standard changes being implemented together."⁶⁴

The Commission should recommend that the Postal Service follow its past practice and accept public comment prior to modifying its FCPS service standards.

VI. The Commission Should Establish a Proceeding to Evaluate the Request in Context and Give Itself Adequate Time to Prepare its Advisory Opinion.

The Commission is not limited to evaluating the Postal Service's proposed changes in isolation and only on the terms under which they have been presented to the Commission. In any proceeding in which "alternatives or related issues of special importance arise," the Commission may "undertake an evaluation of such alternative or issues by means of special studies, public inquiry proceedings, or other appropriate means." 39 C.F.R. § 3020.102(b). The States and Cities urge the Commission to conduct a special study, establish a public inquiry proceeding, or pursue other appropriate means to evaluate the proposed changes to FCPS service standards within the broader context of the now-forthcoming changes to First-Class Mail service standards and the Postal Service's Strategic Plan.

The Request cannot be evaluated in isolation from the Postal Service's changes to service standards for First-Class Mail. The proposed changes to FCPS rely on the same modeling and cost-benefit analyses as the changes to First-Class Mail service standards.⁶⁵ Even the Postal

⁶³ First-Class Mail Final Rule, 86 Fed. Reg. at 43,946; *see also id.* at 43,948.

⁶⁴ Kim Testimony at 9; *see also* Request at 7.

⁶⁵ *See, e.g.,* Hagenstein Testimony at 31 ("Aside from the FCPS service standard changes, the assumptions, inputs, and constraints utilized in the First-Class Mail service standard modeling were also used in the modeling of the FCPS service standard change model."); Kim Testimony at 9 (discussing how "the savings calculated in this analysis are the result of a combined model of both FCM and FCPS service standard changes being implemented

Service agrees, urging the Commission to consider the cost-savings purported to be generated by slowing First-Class Mail when assessing the cost-savings of slowing FCPS.⁶⁶

The Request also cannot be looked at in isolation from the Postal Service's Strategic Plan, of which the proposed changes to service standards are—in the Postal Service's words—a “key component.” Request at 9. The Postal Service claims its Strategic Plan is necessary for an organization in “crisis” and will “reverse a projected \$160 billion in losses over the next ten years.”⁶⁷ But the proposal to slow FCPS may only improve service performance by 1.95 points (and at most 5.74 points),⁶⁸ and the plans to slow First-Class Mail and FCPS will save a mere \$211 million a year combined. Mr. Hagenstein notes that changes to both First-Class Mail and FCPS service standards provide “other benefits,” including “the ability to transition the mail processing network to more shape-based processing discussed above and in the 10-year plan,”⁶⁹ but does not provide any public detail about this significant transition in mail processing. The Postal Service has put its Strategic Plan at issue in this proceeding, which is precisely the kind of “issue[] of special importance” that favors a holistic look from the Commission.

Finally, the Commission's regulations allow it to extend the 90-day deadline to issue an advisory opinion upon a “determination of good cause.” 39 C.F.R. § 3020.102(a). In the First-Class Mail Advisory Opinion, Chairman Kubayanda observed that although “90 days may be sufficient for some cases, it is a challenging and perhaps inappropriate benchmark for more complex cases that require economic, legal, engineering, operational, and statistical analyses for the review of a single proposal.”⁷⁰ The proposed changes to FCPS service standards are similarly

together”); *id.* at 2 (“Finally, cost savings will be calculated based on changes in capacity for both First-Class Mail (FCM) and FCPS combined.”); *id.* at 3 (“The Postal Service projects a reduction of 61.2 percent of First-Class Mail (FCM) pounds flown and a corresponding percentage reduction in FCPS pounds flown.”); *id.* at 5 (“As FCM and FCPS shifts out of the air network and into the highway network, the highway network will experience an increase in required capacity to handle this additional volume.”).

⁶⁶ Request at 7; Hagenstein Testimony at 37 (“However, the analysis presented in the Kim Testimony cannot be viewed in isolation from the proposed change to FCM service standards. The savings presented here would not be applicable if FCPS service standards were to change while FCM and end-to-end Periodicals service standards remained at current levels.”); Kim Testimony at 9 (“However, as described in witness Hagenstein's testimony, it should be noted that the analysis presented in this testimony cannot be viewed in isolation from that proposed change [to First-Class Mail service standards]. The savings presented here would not be applicable if FCPS service standards were to change while FCM service standards remained at current levels.”).

⁶⁷ USPS Strategic Plan at 3.

⁶⁸ Responses of the United States Postal Service to Questions 1-6 of Presiding Officer's Information Request No. 8 (Filing ID: 119454), at Response 1 (Aug. 5, 2021).

⁶⁹ Hagenstein Testimony at 37.

⁷⁰ Advisory Opinion First-Class Mail, Separate Views of Chairman Kubayanda at 8.

complex. The States and Cities urge the Commission to give itself adequate time to evaluate the Postal Service's proposed changes to FCPS.

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